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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 912,219	07 25 2001	Alvin Kershman	SK-3	6369

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BOULDER PATENT SERVICE INC  
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BOULDER, CO 803032924

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05 07 2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/912,219

Applicant(s)

Kershman

Examiner

Lien Tran

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1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb. 10, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s): \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s): \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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1. The 112 second paragraph rejection of claims 1-45 is hereby withdrawn.
2. Claims 1-47 rejected under 35 U.S.C. 103(a) as being unpatentable over Partyka in view of Colvin, Herzing, Coleman et al, the book " Snacks & Sandwiches and the article on "Grilled cheese: Plain and simple .

Partyka discloses a method of making a filled sandwich. The method comprises the steps of treating slices of bread with a thin layer of hydrocolloid on at least one surface of each slice of bread, placing a layer of sandwich filling to the treated surface of at least one of the bread slices, placing the slices in a face-to-face contact to form a sandwich. The sandwich may be directly heated from a frozen condition in a household toaster. The hydrocolloid acts to cause the sandwich filling to adhere to the bread slice so that the assembled sandwich may be heated in a vertical position without loss of filling. The hydrocolloid also lessens the tendency of the sandwich to curl. A light coating of suitable edible fat such as butter, margarine, salad oil or the like is applied to the surfaces and the sandwich is grilled after applying the coating (See columns 2-3)

Partyka does not disclose, applying a high solid fat index lipid mixture, applying a high solid fat index lipid having the characteristics as claimed, coating the sandwich with the high solid fat index after the sandwich is grilled, the thickness and amount of the fat coating and using flour as the sealing paste.

Colvin teaches a method of producing a sandwich. Colvin teaches to apply butter to the outermost surfaces of the upper and lower slices of bread. Each of the outer surfaces should be

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completely covered with a uniform coating of butter which may be applied by a brush, spray or the like. The buttered surfaces effectively preclude loss of moisture of the bread and the sandwich ingredients. The butter also protects the outer surfaces of the bread slices and preserves them in a lubricated, non-crumbling condition. (See column 3 line 63 through column 4 lines 3)

Herzing discloses using hard butter in savory coating. The hard butter has the solid fat index as claimed. (See column 5)

Coleman et al disclose a coating composition to impart a crisp, golden brown surface to foodstuff. The coating contains bread crumbs, maltodextrin and solids. (See columns 2-3)

In the recipe for grilled cheese sandwich, it is taught to butter the slices of bread on the outside before grilling to get a glossy crispness.

The cookbook teaches to dip sandwich in bread crumb before frying to obtain a crunchy texture. (See pages 54-55)

While Partyka teaches applying a fat layer such as butter, margarine, salad oil, shortening, the fat is applied before the sandwich is grilled. The fat applied in Partyka is used for flavoring which is well known in the art. For example, when making a making grilled cheese sandwich, the butter is applied to the bread before grilling; this is shown in the recipe. The grilled sandwich in Partyka is then frozen. It would have been obvious to one skilled in the art to apply a coating of butter to the Partyka sandwich as taught by Colvin to enhance the shelf life of the product because Colvin teaches the butter precludes loss of moisture and protects the outer surfaces of the bread. Fats having varying solid fat index are commercially available. The solid fat index indicates the

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proportion of solids and liquids and fat; the high solid fat index is more solid. It would have been obvious to one skilled in the art to use hard butter such as the one disclosed by Herzing to obtain a more effective barrier due to the higher level of solid because the fat is applied to function as a barrier to prevent moisture migration rather than for flavoring. It would have been obvious to determine the thickness which would give the most optimum protection. Partyka teaches hydrocolloid as the sealing material; the claimed flour paste is also used as adhesive material. It would have been obvious to use an alternative ingredient to carry out the same function. Flour contains starch and starch is a well known binding agent. The amount to be used depends on the quantity of product made and this can readily be determined by one skilled in the art. When the sandwich is coated with a butter layer, it obvious will have the controlled reheating as claimed. It would also have been obvious to add particles such as maltodextrin, bread crumbs and flavoring to the butter before coating to give the sandwich a golden brown and crispy surface. Such coating material is known in the art as shown by Coleman et al. The maltodextrin is a binding agent which will help in binding the coating to the sandwich. The dextrin also promotes crispness development as taught by Coleman. The bread crumb also promote crispness and crunchiness as bread crumb is known to be used in the art for such purpose. The addition of flavoring give flavor to the food product. It is known in the art to dip sandwich in bread crumb before frying to obtain a crunchy texture as shown by the book " Snacks & Sandwiches".

3. Applicant's arguments with respect to claims 1-47 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 2, 2003

*Lien Tran*  
Group 1700